

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE AMENDED	)	
APPLICATION OF TRACFONE	)	CASE NO. TFW-T-09-01
WIRELESS, INC. FOR DESIGNATION AS	)	
AN ELIGIBLE TELECOMMUNICATIONS	)	
CARRIER	)	ORDER NO. 32550
	)	

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On September 19, 2011, the Commission issued its final Order on Reconsideration No. 32358 affirming the denial of TracFone Wireless, Inc.'s ("TracFone") Application for designation as an eligible telecommunications carrier (ETC) in Idaho. In the previous final Order No. 32301, the Commission found that it was not in the public interest to approve TracFone's ETC designation because the Company refused to pay the fees required by: (1) the Idaho Telecommunications Service Assistance Program (ITSAP) found at *Idaho Code* § 56-901 *et seq.*; and (2) the Idaho Emergency Communications Act (the "IECA" or "911 Act") found at *Idaho Code* § 31-4813 *et seq.* TracFone appealed from the Commission's two Orders to the Idaho Supreme Court.

While the appeal was pending, TracFone and Commission Staff (Staff) entered into negotiation to see if the parties might settle the appeal. Upon the parties' Joint Motion, the Supreme Court stayed the appeal to allow settlement discussions. On February 8, 2012, the parties entered into a Settlement Stipulation and urged the Commission to accept the settlement.

On February 17, 2012, the Commission issued a Notice of Proposed Settlement soliciting comments from interested parties regarding the settlement. Order No. 32463. Comments were received from intervenors CTC Telecom, Inc. dba Snake River PCS ("CTC") and the Idaho Telecom Alliance (ITA), and others. After reviewing the proposed settlement, comments and the record, we accept the settlement and grant ETC status to TracFone as conditioned in the settlement.

### BACKGROUND

#### *A. Procedural History*

The procedural background of this case is set out in Order Nos. 32358 and 32301, but the pertinent parts are briefly discussed here. In October 2009, TracFone filed its initial ETC

Application, pursuant to Section 214(e)(2) of the Communications Act of 1934. In February 2010, the Commission issued an Order denying TracFone's Application because, *inter alia*, TracFone failed "to comply with the minimal filing requirements of the Idaho Office of the Secretary of State" which suggested that the Company had a "limited and tangential commitment to consumer service. . . ." See Order No. 30996 at 3. In March 2010, TracFone filed an Amended Application again seeking designation as an ETC in Idaho.

In May 2010, CTC and ITA (collectively referred to as the "Intervenors") each filed a Petition to Intervene. The Commission granted these Petitions to Intervene. Order No. 31096.

On March 31, 2011, the Commission held a technical hearing where witnesses for the Company, Staff and Intervenors presented direct testimony regarding TracFone's Amended Application. On July 29, 2011, the Commission issued Order No. 32301 denying TracFone's Amended Application for designation as an ETC in Idaho. The Commission found that TracFone failed to pay certain fees as required by the Idaho Telephone Assistance Program Act ("ITSAP").<sup>1</sup> The Commission also found that the Company failed to pay fees required by IECA.<sup>2</sup> Consequently, it was not in the "public interest" to grant TracFone's ETC Application. Addressing the issue of the 911 fees, the Commission declared that TracFone could either "remit the applicable fees, or seek an official ruling from the IECC (Idaho Emergency Communications Commission), or another tribunal with relevant jurisdiction, as to whether the fees applied. . . ." Order No. 32358 at 11-12.

Having found that it was contrary to the public interest to grant ETC designation to a carrier that refuses to pay the required ITSAP and 911 fees, the Commission did not reach the merits of TracFone's ETC Application. TracFone filed a Petition for Reconsideration of final Order No. 32301, and Intervenors filed a Joint Opposition to TracFone's Petition for Reconsideration. On September 13, 2011, the Commission issued its reconsideration Order No. 32358, affirming its prior Order.

### ***B. TracFone's Amended Application***

TracFone is a reseller of commercial mobile radio service (CMRS) throughout the United States, including the State of Idaho. First Amended Application at 3. TracFone markets its services through the sale of "prepaid" calling cards sold in a variety of stores throughout

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<sup>1</sup> See *Idaho Code* § 56-904.

<sup>2</sup> See *Idaho Code* § 31-4804.

Idaho. TracFone is incorporated in the State of Delaware and is headquartered in Miami, Florida. TracFone has obtained a Certificate of Authority and Certificate of Good Standing from the Idaho Secretary of State. *Id.*, Exhs. 1-2.

In Idaho, TracFone obtains service from several underlying carriers, including AT&T Mobility, T-Mobile, and Verizon Wireless that enable the Company to offer services wherever these providers offer service. *Id.* Initially, TracFone will offer its LifeLine service in all areas of Idaho currently being served by AT&T Mobility and T-Mobile and expand its service to areas being served by Verizon Wireless in the second quarter of 2010. *Id.* at 17-18.

TracFone states that it “will provide Lifeline service to qualifying customers requesting these services pursuant to the universal service program and in accordance with 47 C.F.R. § 54.202(a)(1).” *Id.* TracFone states that its Lifeline program can be differentiated from other ETC Lifeline programs in the following ways: (1) TracFone will offer low-income consumers the convenience and portability of wireless services; (2) many of its Lifeline-eligible consumers will be able to obtain subsidized wireless service; and (3) TracFone will not charge consumers for certain quantities of its Lifeline service. *Id.*

TracFone asserts that it will provide a free wireless handset to its Lifeline customers. *Id.* at 5. These customers will not incur any activation or usage charges. *Id.* TracFone states that its service is available at nationally uniform rates. *Id.*

TracFone has been granted ETC designation in the following states: Florida, Georgia, Illinois, Louisiana, Maine, Maryland, Michigan, Missouri, New Jersey, Ohio, Texas, West Virginia and Wisconsin. *Id.* at 8, fn. 12. Upon ETC designation in Idaho, TracFone asserts that it will offer “all of the services and functionalities required by Sections 54.101(a) and 54.202(a) of the FCC’s Rules (47 C.F.R. §§ 54.101(a), 54.202(a)) and ETC Checklist. . . .” *Id.* at 11.

TracFone states that it is seeking ETC designation solely to obtain USF funding to provide Lifeline service to qualified low-income consumers and will not seek or accept high-cost support. *Id.* at 18. TracFone noted that there is only one other wireless ETC, Syringa Wireless, providing Lifeline service in Idaho to approximately 1,600 Lifeline customers. *Id.* at 22-23, fn. 37. Finally, the Company believes that granting ETC status will benefit low-income consumers, low-volume users, transient users and other types of consumers in Idaho “who either choose not to enter into long-term service commitments or who are unable to meet the credit requirements necessary to obtain service from other wireline or wireless carriers.” *Id.* at 28.

### ***C. The Settlement Stipulation***

On February 8, 2012, TracFone filed the proposed Settlement Stipulation entered into by the Company and Staff (the “Parties”). The following is an outline of the pertinent terms of the Stipulation:

1. ITSAP Fees. TracFone agrees that it will remit to the ITSAP Administrator, ITSAP fees retroactive to January 1, 2011, calculated in accordance with *Idaho Code* § 56-904. TracFone will continue to do so each month thereafter, unless the ITSAP Administrator authorizes a less frequent remittance schedule pursuant to *Idaho Code* § 56-904(3). TracFone agrees to pay the fees, including past due amounts, to the ITSAP Administrator within 14 days of a final Commission Order approving this Stipulation and conditionally designating TracFone as an ETC. Settlement at 2.
2. 911 Fees. TracFone agrees to file a Declaratory Judgment Action in Fourth District Court requesting a legal determination as to whether TracFone should be required to pay an “emergency communications fee” pursuant to *Idaho Code* § 31-4804. Within 30 days following the filing of said action, the Commission will enter an Order designating TracFone as an ETC pursuant to 47 U.S.C. § 214(e)(2), for the limited purpose of providing Lifeline service to qualified low-income Idaho consumers. TracFone attached a draft of its suit for a Declaratory Judgment to the Stipulation. The complaint filed by TracFone named the State of Idaho and the IECC as respondents and the complaint shall also be served upon the Association of Idaho Cities and the Idaho Association of Counties. Notwithstanding TracFone’s commitment to file an action for a Declaratory Ruling, parties shall retain their ability to resolve the 911 fee issue by other means, including, but not limited to, pursuit of legislation. Settlement at 3.
3. ETC Criteria. The Parties agree that TracFone’s Application for ETC designation complies with all of the relevant criteria and requirements for designation as an ETC under Section 214(e) of the federal Communications Act of 1934, as amended. 47 U.S.C. § 214(e). The Parties stated that the Stipulation is in accordance with the spirit and intent of Commission Order No. 32358, and constitutes substantial compliance therewith. The Parties further agree that, subject to this Stipulation, designation of TracFone as an ETC pursuant to 47 U.S.C. § 214(e)(2) for the limited purpose of providing Lifeline service to low-income Idaho households will serve the public interest. Settlement at 3-4.
4. Access to Funding Support. Once designated as an ETC, TracFone shall have the same entitlement to receive support from the ITSAP fund as do other ETCs who provide Lifeline service in Idaho. TracFone

acknowledges that designation as an ETC in Idaho is subject to annual review by the Commission.

5. Revocation of ETC Status. In the event that the District Court determines that TracFone is subject to the 911 fees, TracFone agrees to reimburse the IECC, or other agencies as the Court deems appropriate, any past due fees dating from Jan 1, 2011. If TracFone does not reimburse the IECC and elects to seek judicial review of an adverse ruling by the District Court that the Company owes the 911 fees, TracFone agrees that the Commission may revoke TracFone's designation as an ETC, pending the outcome of the subsequent judicial review.
6. Lifeline Enrollment. The Parties agree to work in a cooperative manner, and with the Department of Health and Welfare, to establish Lifeline customer enrollment processes which neither favor nor disfavor any provider of Lifeline service and which make it reasonably practicable for Idaho consumers to enroll in the Lifeline program of their choice, including TracFone's SafeLink Wireless program.
7. Dismissal of TracFone's Appeal. Upon entry of an Order designating TracFone as an ETC in Idaho, TracFone agrees to promptly file with the Supreme Court of Idaho a Stipulation of Dismissal of its appeal, Docket No. 39331-2011, with each party to bear its own costs.

## **COMMENTS ON THE SETTLEMENT**

The Commission received written comments from the ITA, CTC, the Idaho Sheriff's Association ("ISA") and IECC opposing the Stipulation. The Company and Staff submitted reply comments.

### ***A. Opposing Comments***

1. ITA/CTC Comments. The Intervenor's oppose the Settlement Stipulation. *See* Intervenor's Comments at 13. The Intervenor's argue that the Commission lacks the discretion to accept a compromised amount of past due 911 and ITSAP fees owed by TracFone. *Id.* at 4. According to the Intervenor's, the Stipulation represents a "waiver" of 11 years of the 12 years that TracFone has conducted business in Idaho. *Id.* at 5-6.

According to the Intervenor's, TracFone is responsible for any delay in granting its Application for ETC status. *Id.* at 11. Intervenor's estimate that TracFone has "short-changed" the counties by more than \$4 million dollars in 911 fees (see Exhibit A). *Id.* at 12. Moreover, they assert that TracFone has gained a "competitive pricing edge" by failing to assess the mandatory fees. *Id.* at 12-13. Intervenor's request that, if the Commission does not outright

reject the Settlement Stipulation, it reopen the proceedings to “receive additional evidence on the question of the economic impact of TracFone’s non-payment of all statutorily mandated fees and enter new findings of fact and conclusions of law. . . .” *Id.* at 13-14.

2. The 911 Parties’ Comments. IECC, ISA and IAC (“the 911 Parties”) submitted letters with identical language opposing the settlement and including an estimate of what they believe TracFone owes the 44 counties of Idaho in past due 911 fees, excluding the \$0.25 enhanced grant fee. They estimate that TracFone owes between \$4,923,496.37 and \$4,962,751.68. *See* IECC Letter at 1.

Based upon TracFone’s prior behavior in other states, they do not believe that TracFone will act in “good faith” per the terms of the settlement. The 911 Parties believe that the matter could be resolved without the proposed declaratory judgment action but does not propose an alternate scheme for reaching a resolution. The 911 Parties simply assert that the IECA statutes are clearly applicable to TracFone.

### ***B. Reply Comments***

1. TracFone. In response to the objections levied against the proposed settlement, TracFone asserts that the Commission has the authority to accept a reasonable compromise of the positions held by the Parties. *See In Re Hoku Materials, Inc.*, Case No. IPC-E-12-02, Order No. 32486. TracFone also referenced the *Cedar Creek Wind* proceedings, Case No. PAC-E-11-01, for the proposition that the Commission may accept a settlement that “would avoid uncertainty and conserve resources (both time and money) and avoid continuing litigation. . . .” TracFone Reply Comments at 4.

TracFone objected to the Intervenor’s characterization of the settlement as a “waiver” of past due ITSAP and IECA fees. *Id.* at 5. TracFone argues that the Commission would not be waiving any past due amounts. *Id.* The Commission would simply be settling a dispute regarding TracFone’s obligation to remit the fees. *Id.* As evidenced by its appeal to the Idaho Supreme Court, TracFone has not conceded that it owes the fees. *Id.* at 5-6. Notwithstanding the Commission’s possible endorsement of the Settlement Stipulation, the applicability of the fees remains in dispute. *Id.* at 6.

TracFone emphasized the benefits derived from the terms of the proposed settlement. *Id.* at 7-8. Idaho taxpayers will not be forced to subsidize the forthcoming appeal and ratepayers will receive ITSAP fees retroactive to January 1, 2011. *Id.* at 7. TracFone believes that the

Intervenors' insistence that the Company should pay past due fees for the entire 12-year period that the Company has conducted business in Idaho is a misapprehension of the issue because neither the IPUC nor the IECC asserted that the fees were applicable prior to the initiation of these proceedings. *Id.* at 8. TracFone argues that the IPUC has only determined that the non-payment of the fees is not in the public interest. *Id.* Therefore, there is "no basis for TracFone to voluntarily remit ITSAP and IECA fees going back twelve years." *Id.* at 8-9. TracFone points out that, outside the context of their ETC Application, the 911 Parties have heretofore made no effort to enforce the IECA fee requirements. *Id.* at 9. TracFone also believes that the exhibits included as attachments to the Intervenors' comments should be excluded because they are not part of the "proceeding's evidentiary record." *Id.*

TracFone believes that the Intervenors' request for a supplemental proceeding to solicit additional evidence regarding the economic impact of the non-payment of the 911 fees should be denied. *Id.* TracFone does not believe that it should be required to remit 911 fees during a time that such fees were being disputed by the Company and/or not being enforced by the IECC. *Id.* at 10.

TracFone asserts that during the pendency of these proceedings the IECC has reversed its position regarding the applicability of the fees to prepaid wireless providers. *Id.* Nevertheless, TracFone believes that the matter need not be resolved before the Commission. *Id.* The Commission has acknowledged that it is not empowered to administer the IECC fee program. *Id.* Thus, the term of the Stipulation providing that the Company file a declaratory judgment suit regarding the applicability of the 911 fee is a reasonable resolution of the matter and will enable the Intervenors and the 911 Parties the opportunity to present their legal arguments in court. *Id.* at 11. Finally, TracFone argues that the Intervenors' opposition may be rooted in their own self-interest to limit competition from a prepaid provider that offers superior service and benefits. *Id.* at 11-12.

2. Commission Staff. Staff stated that the proposed Settlement Stipulation represents a fair compromise that is in the public interest and comports with the "spirit and intent" of the Commission's prior Orders. Staff Reply Comments at 4. Staff entered into settlement negotiations with two considerations: (1) risk of further litigation; and (2) the impact a settlement would have on other traditional prepaid wireless companies. *Id.*

The settlement provides a final determination as to the applicability of the ITSAP fees and devises an appropriate method for the determination of the applicability of the 911 fees in district court. *Id.* The settlement will preserve the integrity of the Commission's ruling regarding the applicability of the ITSAP fees to other prepaid wireless carriers in Idaho. *Id.*

Staff remarked that TracFone's status as an ETC is conditional and may be revoked if TracFone fails to abide by the express terms of the Stipulation. *Id.* at 5. Staff referenced the Commission's "authority to exercise appropriate discretion regarding the recovery of penalties or fees owed by regulated telephone corporations. . . ." *See Idaho Code* § 62-620. Finally, Staff asserted that there is adequate evidence in the record to conclude that TracFone "meets all other requirements of an ETC under Section 214(e) of the federal Communications Act of 1934 (the Act). . . ."

## **COMMISSION DISCUSSION AND FINDINGS**

### ***A. Legal Standards of Review for Settlement Agreements***

Commission Rules of Procedure 351-356 outline the procedures regarding any settlement of an appeal presented to the Commission for approval. IDAPA 31.01.01.351-356. Rule 356 provides that the Commission is not bound by settlement proposals introduced by the parties and that the Commission "will independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy." IDAPA 31.01.01.356. The parties presenting the proposed settlement for Commission approval "carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy." IDAPA 31.01.01.355. Here the Commission issued Notice of the proposed settlement and solicited written comments. IDAPA 31.01.01.354.

### ***B. Standards to Award ETC Designation***

The Commission is empowered to administer the Idaho Telecommunications Act of 1988, as amended, and applicable federal law. *Idaho Code* §§ 62-602(5); 62-615(1). The Commission "has full jurisdiction and authority to designate carriers as ETCs pursuant to the federal Telecommunications Act of 1996. . . ." Order No. 29841 at 2. Under Idaho law, the Commission's authority specifically includes the promulgation of any "procedures necessary to carry out the duties authorized or required by [the federal Act]." *Idaho Code* § 62-615(3).



### *C. ITSAP and 911 Fees*

As we stated in our Order on Reconsideration, “the issue of the applicability of the IECA and ITSAP fees has been the subject of substantial argument and briefing in this case.” Order No. 32358 at 7. After reviewing the pleadings, the Commission ultimately concluded that the Company must “remit the applicable fees” or obtain a “ruling from the IECC, or another tribunal with relevant jurisdiction,” as to whether the fees applied. *Id.* at 11-12. Thus, any proposed settlement put forth by TracFone should, as a matter of necessity, adhere to this mandate.

The Commission finds that the proposed Settlement Stipulation is fair, just and reasonable. The proposed settlement complies with our final directives set forth in Order No. 32358. According to the express terms of the Settlement Stipulation, TracFone has agreed to abandon its legal argument regarding the applicability of the ITSAP fees and forward the applicable fees to the ITSAP Administrator. The Company also agrees to seek a declaratory ruling on the issue of whether the 911 fees apply to the Company. *See* Stipulation at 2-3.

By approving TracFone’s agreement to remit monthly ITSAP fees, retroactive to January 1, 2011, the Commission is asserting its authority under *Idaho Code* § 56-904 to “impose a uniform statewide monthly surcharge” upon TracFone. TracFone has consistently pressed its legal rights in this case and uniformly objected to the imposition of the monthly ITSAP surcharge. Although the Commission ultimately rejected TracFone’s position on these issues, the Company’s arguments against the applicability of the fees were at least colorable and presented an issue of first impression for the Commission to adjudicate.

By approving the settlement, the Commission is in no way ceding its authority or waiving any past due amounts. Rather, the Commission is approving a reasonable settlement of a disputed issue currently pending before the Idaho Supreme Court. Further, the ITSAP statute clearly states that the Commission is the governmental entity empowered to “**determine and impose** a uniform statewide monthly surcharge on each end-user’s business, residential and wireless access service.” *Idaho Code* § 56-904(1) (emphasis added). Thus, Intervenor’s argument that the Commission lacks the statutory discretion and authority to reach a compromise regarding the amount of ITSAP fees owed by TracFone is without merit.

*Idaho Code* § 61-619 provides that all telecommunications matters submitted to the Commission “shall be governed by the commission’s rules of practice and procedure.” Our rules set out procedures for reviewing settlements on appeal. Rules 354-356.

Intervenors’ position that TracFone has needlessly deprived the ITSAP of much-needed funds also ignores the fact that the Company is not currently drawing from the ITSAP Fund. It is for that purpose that the Company has come before this Commission. “Funds for the [ITSAP] program are raised through a surcharge on all end-user business, residential and wireless access service lines.” Order No. 32526 at 1. “. . . ITSAP provides recipients with a reduction in costs of residential basic local exchange telephone service for eligible customers.” Order No. 29751 at 1. The Settlement Stipulation accomplishes both of these objectives – it mandates the imposition of an ITSAP surcharge which will then be distributed to qualifying low-income customers in Idaho.

Turning to the settlement of the 911 fees, we find the settlement requiring TracFone to seek a declaratory judgment in District Court as a resolution of this disputed issue to be reasonable and in the public interest. We believe that it is appropriate for the District Court to determine the issue of the 911 fees. By submitting this issue to the District Court, the IECC and other interested parties will be afforded the opportunity to make their cases that 911 fees are applicable to TracFone’s prepaid calling card service. Moreover, they can seek back payment of applicable 911 fees before the court.

The proposed settlement “will avoid uncertainty and conserve resources (both time and money).” Order No. 32419 at 9 *citing* Rules 354-355; *Aguirre v. Hamlin*, 80 Idaho 176, 327 P.2d 349 (1958). “The settlement . . . represents a significant benefit to all Parties” and “brings the dispute to a reasonable conclusion. . . .” *Id.*

#### ***D. ETC Designation***

It is well established that to be designated an ETC, the telecommunications provider must: (1) be a “common carrier” as defined by 47 U.S.C. § 153(10); (2) offer throughout its proposed service areas the universal services<sup>3</sup> set forth in 47 C.F.R. § 54.101(a) either by using

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<sup>3</sup> The enumerated services include: (1) voice grade access to the public switched network; (2) local calling; (3) touch tone signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to 911 emergency services where available; (6) access to operator services; (7) access to long-distance service; (8) access to directory services; and (9) toll limitation service. 47 C.F.R. § 54.101(a).

its own facilities or a combination of its own facilities and the resale of another carrier's services;<sup>4</sup> and (3) must advertise the availability of its universal service offering and the charges therefore using media of general distribution. Order No. 29841 at 3; *see also* 47 U.S.C. § 214(e)(1).

Additionally, in areas already served by a rural telephone company, TracFone has the burden of demonstrating that the public interest would be served by granting its ETC Application. *Id.* at 8; *see also* 47 U.S.C. § 214(e)(2). “Merely asserting that granting the application will lead to increased competition in a particular service area is not enough, by itself, to warrant ETC designation in rural areas.” Order No. 30867 at 3; *see also* Order No. 29841 at 4.

The Commission's prior Orders in this proceeding focused primarily on whether TracFone's Amended Application met the public interest requirement for ETC designation. In the Commission's final Order on Reconsideration, we stated that, having found that TracFone's Amended Application did not “comply with the public interest, we need not analyze the specific requirements in Section 214(e) [of the Act].” Order No. 32358 at 9. Thus, the public interest issue was dispositive and the Commission deemed it unnecessary to offer any dicta as to whether TracFone's Amended Application satisfied the remaining technical requirements for ETC designation.

However, in the Settlement Stipulation, the Company and Staff now assert that “TracFone's Application for designation as an ETC in Idaho complies with all of the relevant criteria and requirements for designation as an ETC under Section 214(e) of the federal Communications Act of 1934, as amended. 47 U.S.C. § 214(e).” Stipulation at 2, ¶ 3. It is therefore incumbent upon us to make specific findings as to whether the Company's Amended Application satisfies the requirements for ETC designation. *See supra* at 10, fn. 3.

We find that much of TracFone's Amended Application for ETC designation is not subject to dispute. For instance, TracFone's status as a “common carrier,” as the term is defined in the Act, offering its commercial mobile radio service (CMRS) throughout its Idaho service territory stands un rebutted. *See* TracFone First Amended Application at 4. Additionally, TracFone has established that it has been granted forbearance from the FCC regarding the

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<sup>4</sup> TracFone was granted a forbearance of the “facilities requirement.” *See* FCC 05-165, *In the Matter of Federal-State Joint Board on Universal Service Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Docket No. 96-45, September 8, 2005.

“facilities requirement.” *See id.*, Exh. 4 (*In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 § U.S.C. 214(e)(1)(A) and 47 § C.F.R. 54.201(i)*, FCC Order No. 05-165, CC Docket No. 96-45, September 8, 2005).

At our technical hearing on March 31, 2011, Staff witness Grace Seaman presented testimony regarding TracFone’s Amended Application. Tr. at 307-51. Specifically, Ms. Seaman testified that in order to merit ETC designation TracFone should be required to: (1) remit the applicable ITSAP fees; (2) remit the applicable 911 fees; and (3) provide the Commission with a list of service centers it intended to serve.<sup>5</sup> Tr. at 323. The obvious implication from Staff’s testimony and subsequent comments is that TracFone’s Application satisfied the remaining technical requirements for ETC designation.

In their comments opposing the proposed Settlement Stipulation, the Intervenor, and 911 Parties do not raise objections to the non-public interest requirements for ETC designation. As more fully described above, their objections focused primarily on the manner proposed by TracFone and Staff to resolve the outstanding appellate issue regarding the Company’s non-payment of the ITSAP and 911 fees. The Intervenor has requested that the Commission “enter findings of fact and conclusions of law regarding all of the other evidence and arguments presented to it at the hearing regarding TracFone’s . . . desire to receive ETC status in one or more areas served by a rural telephone company.” Intervenor’s Comments at 14.

As we have done in every instance wherein a telecommunications carrier has petitioned for ETC status in Idaho, the Commission carefully examined the record in this case in order to determine whether TracFone’s Amended Application and the proposed settlement are in accordance with existing state and federal law, as well as our prior Orders. We find that designating TracFone as an ETC in the requested service areas, both rural and non-rural, is consistent with “the public interest, convenience, and necessity.” Order No. 30867 at 3. “Our review of ETC requests for rural wire centers is more rigorous because, under 47 U.S.C. § 214(e)(2), ETC designation is not mandatory.” *Id.* “We have held previously that companies seeking ETC designation in rural areas have the burden of demonstrating that the public interest would be served by granting their applications.” *Id.* “Merely asserting that granting the

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<sup>5</sup> Staff’s concern regarding the list of wire centers centered upon ensuring that the Company was not engaging in the unlawful practice of “cream skimming.” Tr. at 327-328. The “cream skimming” analysis and requirement does not pertain to telecommunications providers who seek Lifeline support only. Tr. at 257.

application will lead to increased competition in a particular service area is not enough, by itself to warrant ETC designation in rural areas.” *Id. citing* Order No. 29841 at 4.

We conclude that granting ETC status to TracFone “will benefit consumers by offering services of another competitor and may be beneficial to eligible recipients of Idaho’s Telecommunications Service Assistance Program (ITSAP) or Lifeline service.” Order No. 30360 at 8. We further find that the public interest will be served by designating TracFone as an ETC in all areas currently being served by ILECs AT&T Mobility, T-Mobile and Verizon Wireless. *See* TracFone Amended ETC Application at 17-18.

TracFone’s decision to halt its legal challenge of the applicability of the ITSAP fee serves the public interest. The terms of the Settlement Stipulation cement the Company’s obligation toward making substantial annual contributions to the ITSAP Fund. These contributions should enable increased participation by eligible households in the federal Lifeline Program.

Additionally, TracFone has adequately demonstrated that it is in compliance with or validly exempt from, pursuant to its FCC Forbearance Order, the specific Idaho ETC requirements more fully described in Order No. 29841 at 21, Appendix 1. Therefore, we find that TracFone has satisfied the requirements for designation as an ETC and approves the Company’s Application for ETC status in Idaho. *See* 47 U.S.C. § 214(e)(1); Commission Order No. 29841.

Finally, we are also satisfied that the settlement contains adequate safeguards to ensure TracFone’s ongoing compliance with its duties and responsibilities as an ETC in Idaho. TracFone’s designation as an ETC is conditional upon its strict adherence to each and every term of the Settlement Stipulation, including annual review of its ETC status. If the Company fails to live up to the commitment embodied in the Settlement Stipulation and approved herein then it will forfeit its ETC status in Idaho and the Idaho ITSAP Administrator shall be directed to cease further disbursement of ITSAP funding.

### **CONCLUSIONS OF LAW**

Therefore, after reviewing the voluminous record in this proceeding, we find the proposed settlement to be fair, just and reasonable and in the public interest.

We further find that TracFone’s Application for designation as an ETC in Idaho complies with all of the requirements for designation as an ETC under Section 214(e) of the

federal Communications Act of 1934, as amended. 47 U.S.C. § 214(e), and Commission Order No. 29841.

### **ORDER**

IT IS HEREBY ORDERED that the Commission herein approves all of the terms and conditions set forth in the Settlement Stipulation.

IT IS FURTHER ORDERED that TracFone shall remit to the ITSAP Administrator, within fourteen (14) days of the issuance of a final Order in this case, monthly ITSAP fees, retroactive to January 1, 2011, due and owing pursuant to *Idaho Code* § 56-904.

IT IS FURTHER ORDERED that TracFone shall file a Declaratory Judgment Action in Fourth District Court requesting a determination as to whether TracFone should be required to pay an “emergency communications fee” pursuant to *Idaho Code* §§ 31-4804, 31-4813.

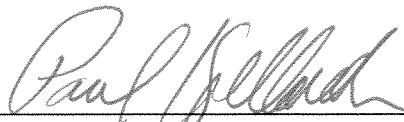
IT IS FURTHER ORDERED that TracFone’s designation as an ETC in Idaho shall be contingent upon the Company’s continued and ongoing obligation to remit the applicable ITSAP fees, compliance with any and all Orders issued by the District Court resulting from its above-mentioned Declaratory Judgment Action, as well as other reporting and filing requirements outlined in the Idaho Code and the Commission’s ETC Requirements Order No. 29841.

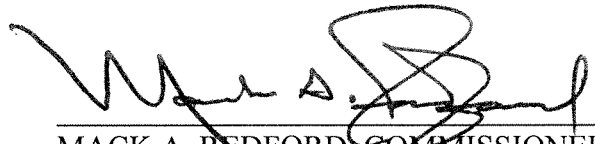
IT IS FURTHER ORDERED that TracFone shall work in a cooperative manner with the Idaho Department of Health and Welfare to establish Lifeline customer enrollment processes which neither favor nor disfavor any provider of Lifeline service and which make it reasonably practicable for Idaho consumers to enroll in the Lifeline program of their choice, including TracFone’s SafeLink Wireless program.

IT IS FURTHER ORDERED that TracFone shall promptly file a Stipulation of Dismissal of its appeal, Docket No. 39331-2011.

THIS IS A PARTIAL FINAL ORDER AND SETTLEMENT ON APPEAL. Any party aggrieved by that part of this Order designating TracFone as an eligible telecommunications carrier (ETC) in Idaho based upon its Application may petition for reconsideration within twenty-one (21) days. *See Idaho Code* § 62-619. The Commission has previously denied reconsideration on the ITSAP and 911 issues; therefore, reconsideration is not available regarding those issues.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 18<sup>th</sup>  
day of May 2012.

  
PAUL KJELLANDER, PRESIDENT

  
MACK A. REDFORD, COMMISSIONER

  
MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

O:TFW-T-09-01\_np12\_Stipulation